

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : DEFENDANT'S PRO SE OBJECTIONS

-against- : IND. NO. 14-CR-95 (JFB)

OLENA KALICHENKO, :

Defendant. :

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There are two other cases that want to draw the courts attention to.

In US v Polouzzi 564F3d 142: Jan 9, 2009

defendant was convicted as a result of trial for possession and receipt of child porn in violation of 18 USC 2252<a><2>, 2252<a><4>, a charge that carries 5 years mandatory minimum. He has been sentenced by Judge Weinstein to one year and one day in prison. The government has been represented by Mr Bode where he has charged Polouzzi with 12 counts of receipt and 11 counts of possession of images that have been overturned by the Second Circuit into a single violation of 18 USCS 2252<a><4> instead of 12 separate convictions.

US v Pabon-Cruz 391 F 3d 86: 2004US App Dec 3 2004

Where the Second Circuit remanded the case for resentencing defendant who was convicted under 18 USCS 2251<c><1><A> for advertising and distribution of child porn 18 USCS 2252A

The Second Circuit "We consider nostra sponte through the issue was not raised by counsel, nor addressed by District court the statutory penalty provision of 18 USC 2251<d> mandates a minimum ten-year term imprisonment..."

Contrary to the government arguments, however, we do not find the other clauses in the paragraph to be irrefutable proof of Congress intent to ensure mandatory min sentences for all offenders without exception; the discrepancy could as easily suggest Congress intent to allow a more lenient sentence for first-time offenders.

In order for me to properly discribe my attitude to the conduct that occured in 2012 as a result of my relationship with Valerio I want to go back to the letter wrote by me to Mr Donoghue last year, the very first page:

"First of all, let me tell you that I am extremely sorry for what I did producing videos with my daughter for Mr Valerio during my toxic and abusive relations with him. I want to tell you that I realize that it is a very wrong and unacceptable behavior from my side, as I look back in time and my actions back then I feel very much disgusted of myself, my soul is crying to the Lord and is asking Him for forgiveness, the same I ask my daughter to forgive me for my actions towards her as well.

I also have a very strong faith in God and here at mdc I have been studying Bible a lot, so I want to let you know that my complete view towards the sin of sexual immorality has entirely changed. Not only I consider a sexual misconduct towards the minors to be a huge sin, but I also consider homosexuality and any sexual relationship with an adult man if it is outside of the legal marriage to be a sin also. I do believe that proper relationship between a man and a woman are supposed to be based on true love and such issues as money, success, citizenship, nationality, etc should not play a role when selecting a life long partner for yourself, I do also believe that all sins including the sin of sexual immorality do have eternal consequences for your soul in the afterlife and in the afterlife I will have to face God by Himself as my Judge. Also Mr Donoghue, I want you to understand that it is not only for you or Judge Bianco or anybody else<with all the respect> but I have a great fear for the Lord and I do sincerely repent and it is very important for me to be forgiven by Him. I also love my daughter and it is very important for me to be forgiven by her and my mother also because both of them are suffering at the moment at my absence."

So those are my true beliefs and I stand strong for them

The actual offense took place 7 years ago, I did have lack of judgement at that time but I have transformed my way of thinking entirely.

The roots of my problem were that me and my family we were financially dependant on Mr Valerio and he used my vulnerability and desperate situation at that time, my fear for my family to end up on the streets again in order for me to make videos.

My daughter was just being retrieved by us from the orphanage, where she was placed with 40 other kids with lack of nutrition, me and my mother were homeless since 2008 consistently for 4 years including my pregnancy and giving birth to Sophia before the actual offense took place. Mr Valerio knew and he was making fun of me saying:"if it was not up to his mercy, we would end up dying on the streets of Kiev." I still remember those words of him.

My mother has already provided a testimony where she testified in full details that videos were made by me out of economic durace. The court is in the possession of my mothers testimony. The greed factor entirely contradicts my mothers testimony.

However I do agree that economic durace is not a defense to the crime but rather a mitigating circumstance.

And I remember that Mr Larusso wanted to present this as a defense but I dont think it is the actual defense. And I think that I should have come up with another solution to get the money that was necessary for my family at that time in order to secure basic needs such as shelter and food.

Another tough lesson that I had to learn was for me to earn the money with my own labor. Which I have been successfully doing since my arest and also tryng to send the money to my family out of my paycheck when I was working with the laundry and was paid around 90dollars a month that was in 2017 until the budget for all the workers was cut. I would try to save 50 dollars from every paycheck and would send to Mr LaRusso in order for him to wire the money to my family because it is my responsibility to care about their wellbeing and my mother, I believe has testified to that. I also arranged a few packages with the cloths, books, candies, toys, etc to be sent to my daughter by one of the member of ukrainian community who lives in New York. Even though it was not my

money spent but I was looking for every single opportunity to help my mother since my arrest despite of the fact that my opportunities to anyhow help my mother from jail are extremely limited.

And even recently in the beginning of this year when my mother informed me that my government started to forcefully take money from her pension in order to pay her utilities debt, I contacted the members of my Church from jail and begged them to come up with the necessary amount of money for her to pay the most outstanding debt<around 500dollars> so she will be able to get her full pension again which is the only source both her and Sophia are currently living on at my absence.

There is no evidence to suggest that I was not taking care of my daughter when I did have money. To the contrary the court is in the possession of the pictures of the trip where I took my daughter to one of the best hotels in Antalia, Turkey, one of the best kids resorts with a Disneyshow. There are also multiple pictures of us being together in Kiev and attending Church, different activities where my daughter is happy. My mother and my daughter have both testified of what kind of memories my daughter has about me.

There is also a testimony of Mr Dicleli who saw my interactions with my family in 2013 and an additional testimony of how I interacted with his son:

"In addition, I have noticed that Olena is very gentle and loving towards children. While Olena was staying in my house, I would give her money for her personal spending and try to help her family by sending them money. I noticed that from that money Olena would buy snacks and candies for my son to make him happy. If I had to come home late, she would properly feed my son and take care of him. As I trusted Olena, I had no hesitation to leave my son with her."

However I do agree that I should have stayed away from Mr Valerio from the very beginning and I should not even be looking for a man abroad especially using the dating site. A psychologist described that I was on a "mission to find a husband" I think its true and I think that instead of actively searching online I should have just waited until God puts the right person into my life and I should have relied only on myself when providing for my family.

So once again I want to say that I dont think economic durace is a defense to a crime and I think that I should have come up with another source of money to provide for basic needs for my family. And I think that I should have never contacted Valerio at all.

A psychologist who interviewed me has already stated that my only sexual interest is in adult men. Despite of the current offense I have no interest in pornography and I never watched no pornography neither before nor after the current offense, not even the adult one. And as I have previously indicated I consider it to be a huge sin and even if 7 years ago I may have had lack of judgement but I have reassessed my entire way of thinking and I agree that pornography even adult one is wrong and carries eternal consequences for your soul.

Even in the year of 2013 after Valerio approached me asking to help him with the adoption of a child from my country I had severe concerns in my mind as to a true reason why he wanted to adopt a child. If you actually check my response to Valerios request to help him with adoption the very first question that I asked him was "Why do you want to adopt a child?" I have shared my concerns with Mr Dicleli and he agreed that the reason why Valerio wants to adopt a child is for sexual purposes,

he asked for a girl only and he was in communication with other women from my city as he indicated by himself in his email to me, so I thought that one of these women could have easily assisted him with the adoption considering she didn't know who Valerio was.

So that was the only reason why me and Mr Dicleli have decided together to contact US embassy regarding Valerio's adoption request.

There is no evidence to suggest that after I discovered Valerio had interest in children I still wanted to marry him. After my tourist visa to US has been cancelled, I never reapplied for a fiancée visa to US for myself and my daughter. I was still depending on his money but under no circumstance would I ever dare to come with my daughter to live with him under the same roof. I have indicated in my letter to Donoghue that I am extremely grateful to God that my tourist visa to US has been cancelled. If I still wanted to marry Valerio or give him any "rights" for my daughter I would have approached Ukrainian government and would have filed all the necessary documents indicating that.

Which obviously never happened.

Probation officer was questioning as to why I didn't immediately leave Valerio after he raped me at his house....I already indicated that despite of the fact that he abused me, my daughter was still at the orphanage at that time and he was the only person who has agreed to help me to take her out of the orphanage, I used to call from his house and check on my daughter if she was alright but the principal refused even to talk to me because she said she had many children in her care and Sophia was not her priority....

Further more despite of the fact that Valerio abused me I saw him interacting with his son and his daughter that he has with a lady from South Africa, I saw that he was sincerely concerned about that kid and he was arranging a trip to London to meet his daughter, my observations were that his feelings towards his daughter with a lady from South Africa were sincere. And I also knew that that lady, I believe her name is Angelique has lived with Valerio for more than a year at his residence and she brought her son to stay all together as a family with him. So I thought that he would accept my daughter as his own same as he told me he has accepted a son of that lady despite of the fact that he was not his biological son.

So once again I want to say that economic duress is not a defense to a crime and I should have come up with another solution that was necessary to secure basic needs for my family at that time. Even if I had lack of judgement with regard to my behavior 7 years ago, I have entirely reassessed it and I understand that all the sins including the sin of sexual immorality do have eternal consequences for my soul, I do have a great fear for the Lord and I ask Him and my daughter for forgiveness constantly.

With the regard to Ms Langones offense level calculation I strongly object not simply because I want to object but based on how other defendants with similar offenses were treated.

1 The Court is already familiar with Third Circ Harvey's case

Defendant was convicted upon a conditional plea of one count of possession of child porn in violation of 2252 However he by himself produced 75 photographs of naked children. Along with

the array of photographs the FBI discovered a file of 560 index cards. The hand-written text of each index card described, in graphic detail, Harveys deviant sexual activities with boys- while on trips to Philippines.

An adjusted base offense level for Harvey with the cross reference for his extraterritorial sexual exploitation crime was 25. Harveys entire sentence was 48 months.

2 United States v Marc Reeves

Court of Appeals for the Armed forces

Appellant servicemember was convicted of violating 18 USCS 2251(a) and 2252(a)(2) provisions of CPPA for acts committed while he was stationed in Germany. His entire conviction was dismissed based on extraterritorial grounds but I want to draw courts attention to the sentence that he received prior to the dismissal of his conviction, confinement of 56 months. Reeves stipulated to standing on the one side of the Man River and for between twenty to thirty minutes, training his video camera on the genital areas of two young German girls, while accompanied by his own young daughter. All of these images and films he secreted in his vehicle.

3 United States v Robb Freeman, 3rd Circuit

Robb Freeman challenges 70 months sentence that he received after pleading guilty to receipt and possession of child porn. Mr Freeman admitted to molesting numerous young boys and that he had admitted to recently taking advantage of opportunities to babysit and take nude photographs of young boys in Pennsylvania. The pre-sentencing report also referred to records of Freemans earlier treatment in Sexual Disorder clinic at Johns Hopkins. The record revealed that Freeman didnt not think it was wrong to engage in sexual relationships with young boys and Dr Lehne, a licensed psychologist believed Freeman was not at great risk for relapsing into inappropriate sexual behavior. Freemans finale adjusted offense level was 24 produced a guideline sentencing range of 63-78 months imprisonment.

I believe there is a substantial difference between Ms Langones calculation and the calculation of the guideline range that Mr Freeman has received considering that he admitted to molesting numerous young boys and he doesnt think it is wrong.

4 Second Circ Gatlins case

I have already brought this case to the attention of the court but with the regard of the issue of extraterritoriality where the defendants conviction of the sexual abuse of the minor that took place in Germany has been dismissed by the Second Cir however now I want to bring to the courts attention the sentence that gatlins originally received was 48 months. And there was a sexual intercourse where the victim became pregnant from Gatlin and later gave a birth.

I would like to draw courts special attention to 3 cases of 3 different women that started the same time as my case here in the Eastern district of New York.

Ms Keira Norton, coincidentally she was represented by Mr Singer as well.

Ms Leigh Marcini and Mr Jennie Lemay. I personally know all these 3 women, know their story and have their cases now open in front of me.

My understanding is that all these 3 women have been charged and committed a crime of sexual exploitation of a minor as a result of their relationship with the predator man, a former police officer Alberto Randazzo. I do have Mr Randazzo's guideline calculation now open in front of me. His total adjusted offense level was 40-43. According to Ms Langone's calculation my offense level is even higher than the one of Mr Randazzo. Who is a serial sexual predator and who directed 5 different women to sexually exploit children and sent the videos to him. Ms Langone doesn't think that I should be treated same as one of the women who produced videos for Randazzo, she thinks I should be treated as Randazzo by himself. The offense level calculated by her simply falls into his profile but not into mine.

Ms Keira Norton has been initially charged with the conspiracy to sexually exploit a child <her son> under title 18 USCS 2251<e>, 2252<a><2>. In her situation the sexually explicit conduct was distributed to Mr Randazzo via Skype. That is the similar behavior I was being engaged in with the difference that I sent the video through email to Mr Valerio. Mr Keira Norton signed a waiver of an indictment and plead guilty to one count of distribution of child porn, the sexual exploitation count dismissed on the motion of the government.

The disposition of the case imprisonment for 60 months and 5 years supervised release.

It should be noted that Ms Norton didn't provide any assistance to the government in its investigation against Mr Randazzo.

Ms Jennie Lemay has been charged in a superseding indictment with conspiracy to commit sex trafficking of a child, attempted sex trafficking of a child, conspiracy to sexually exploit a child, conspiracy to sexually exploit a child-parent or legal guardian, attempted sexual exploitation of a child.

Title 18 USC 1591<1>, 1594<a>, 1594<c>, 2251<e> and 3551 et, seq

Ms Lemay has been allowed to plea to a single count of conspiracy to commit sex trafficking of a child 1591<a><1>. All underlying counts were dismissed on the motion of the government.

My understanding of the case from the documents is that Ms Lemay not only participated in the video calls with Mr Randazzo via Skype with the victim simulating performance of the oral sex but also she met in a hotel room with Randazzo and the victim, gave him Ambian and alcohol so that Lemay could sexually abuse the victim while Randazzo filmed it.

I have prevented Valerio from getting a child from my country by reporting him to US embassy in Kiev after he expressed his desire to adopt a girl from my country because I was concerned about his true intentions with the regard to a child. My concerns about his motives for adoption are expressed in my initial email to the Embassy and also in my August email to Val, where I said that he was a sick person and he should be stopped.

Disposition of Ms Lemay's case 120 months imprisonment and 5 years supervised release.

Should be noted Ms Lemay didn't cooperate with the government.

Ms Leigh Marcini

Plead guilty to count 3 of the Second Superseding indictment 18 USCS 2251<e> conspiracy to sexually exploit a child, the rest of the counts dismissed on the motion of the government. The same plea offer that government suggested for me last year where the appealate issue was being preserved. Disposition of the case 60 months imprisonment.

Ms Marcini has been provided with a K1 letter from the government and I assume she provided some sort of cooperation but only after her arrest.

Ms Marcini was not a person responsible for Mr Randazzos arrest, it was another woman Mr Zarrelto who has initially reported Mr Randazzo and a testimony provided by that woman led to Randazzos arrest.

Nevertheless the government under the name of Richard Donoghue has moved to file a K1 letter on her behalf.

There is a clear unfairness in the way how US government is treating me compared with the other women who committed similar offense. This unfairness has been consistently communicated to me by already a second defense attorney, initially by Mr LaRusso, now by Mr Singer and Mr Singer has experience in representing a woman who committed same crime as I did under the influence of a predator man, so Mr Singer speaks from his own experience in similar cases.

The amount of cooperation that I have provided to american government against Mr Valerio is tremendous. The criminal complaint and an arrest warrant issued against Valerio has been obtained solely on the information provided by me to agent Angelini in Kiev with whom I entered into a cooperation agreement and entirely fulfilled my part. Mr valerio would still be free walking on the streets of New York if I havent approached US Embassy in Kiev with his request to adopt a child from Ukraine and subsequently provided all the evidence that has been used against Valerio during his trial.

Furthermore I testified at Faticos hearing as a government witness with the regard to the rape suffered by me at Valerios residence, the court and already the Second Circ credited my testimony despite of the fact that Mr Valerio has recently appealed and he was trying to discredit my testimony:" the district court impermissibly relied on uncharged conduct alleged by the government after trial and that it specifically erred by sua sponte inviting Valerios co-conspirator Kalichenko to testify at an evidentiary hearing ...where several women testified credibly to behavior including violent rape, death threats and assault."

The fact that US government has agreed to provide credit for Ms Marcini who committed similar offense and is refusing to do so for me despite of the fact that they totally relied on my testimony in Valerios prosecution and credited my testimony tells me that US government is acting in a bad faith towards me. The government agent Angelini in his emails to me has acknowledged my "substantial assistance" to them multiple times and told me how grateful he is for all the information that I provided. Government agent Troyd acknowledged during the court hearing in March of 2016 that it was only because of the help of the evidence provided by me, they were being able to move forward with Valerios case. District attorney Ameet Kabrawala at the same court hearing in March of 2016 said that nobody <means american government> is disputing the amount of cooperation that

I have provided was extremely valuable. <Murray I think we should go back into the March 2016 conference and see what exactly Troyd and Ameet said>

I think the court should also know that in the beginning of my case a district attorney Mr Kabrawala has approached Mr LaRusso by himself during a private alumni dinner, he wanted to discuss my case with Mr LaRusso, my understanding is that there is was a disagreement between Mr Kabrawala and Mr Bode about me and Mr Kabrawala was willing to either file a K1 letter or suggest a plea to transportation count, however he was being told by Mr Bode "to shut up and be quite". I learned about this conversation from Mr LaRusso.

So based on Second Circs decision in United States v John Doe 586 Fed Appx 58; 2014 US App where the appellate court directed a district court to conduct a hearing on whether government had acted in bad faith in refusing to make motion seeking downward departure from mandatory minimum on defendants behalf pursuant to 18 USCS §3553(e) and USSG §5K1.1 because defendant made requisite showing to rebut governments neutral explanation.

I request my attorney to proceed with this motion, a motion to compel the government to file K1 letter.